ARGENTINA

CRIMINAL SENTENCING

A. General questions

1. In your system, how does a judge decide the appropriate sentence in a criminal case? What are the most important factors he has to consider? Does a judge have a complete discretion as to sentencing? Is he bound in some cases (and if so, in which?) to pass a sentence which is fixed by law? Are there crimes (apart from minor motoring cases) or circumstances in which mandatory minimum sentences are laid down by law? Please give examples.

The proper sentence is decided bearing in mind: first, the evidence on the materiality of the alleged fact, this is to say, that the crime has really existed; then, it must be proved who his author was; once these aspects of materiality and authorship are sorted out, the author's criminal liability will be considered. All evidence is analyzed applying the "reglas de la sana crítica racional" [rules of common sense and reasonable criteria], which is the system prescribed by the argentine law. Once these parameters are established, the possible justification causes for the alleged conduct are analyzed, all of them set forth by law; if none are applicable, a specific reproach is made to the alleged conduct and, according to the factual characteristics and the personal circumstances of the accused, a condemnatory sentence is reached. Otherwise, the accused shall be absolved.

In the Argentine Republic, Judges enjoy full independence in the performance of their duty, which is a guarantee that the National Constitution grants to all citizens; this guarantee works as long as the other branches of government respect the principle of division of powers set forth in the Constitution. There are no such things as mandatory sentences; it is the judge who, analyzing each case, shall decide according to law. There is only one case of a criminal sentence with no limit as regards time of imprisonment, which is the one applicable to qualified murder, the penalty being life imprisonment.- As for the minimum sentences, these have increased in proportion to the population's growth and the worsening of the economic crisis during the 90s.

2. Does your system try to see that for similar offences different courts pass similar sentences? If so, how does it do this?

For the event that in similar cases differing sentences are passed, the argentine system establishes "fallos plenarios" [decisions reached by several courts of appeals, acting together as a single court, regarding a legal issue upon which they had previously held conflicting positions] issued by Superior Courts to unify case-law. It should also be noted that the doctrine resulting from the rulings of the National Supreme Court is binding for the courts, unless there are grounds which justify a different decision.

3. Are judges in your system given guidance about the appropriate sentence for a particular crime? If so, does this guidance come from higher courts, from judges' professional associations or from some other source? Where there are sentencing guidelines, may a judge depart from them?

4. In your system, are there more mandatory or mandatory minimum sentences than there used to be? If so, why do you think this is? What is the reaction of judges? Do judges feel that their independence is threatened?

Today, effective sentences [this means, sentences in which actual imprisonment is ordered] are, in proportion, fewer than in the past. One of the reasons for this circumstance is that legislative amendments, which have adapted the internal legislation to international treaties, have established a system of alternative penalties, which so far has not obtained the expected results, such as the suspension of the trial,
enabling judges to substitute the penalty of imprisonment with the fulfilling of certain conditions, such as
the performance of duties for the benefit of the community. Another amendment was the enactment of the
Juicio Abreviado [Reduced Trial] Act, which speeds up the trial process.

5. Is there a way in your system in which a sentence which is thought to be too lenient can be reviewed and
increased by a higher court? If so, who can use this procedure?

Confession by the accused is taken into account at the moment of deciding the severity of the sanction to be
imposed, since judges must assess the attenuating and aggravating circumstances of the conduct of the
accused, and the confession is one of these attenuating circumstances; however, the penalty imposed may
never be more lenient than the minimum statutory limit existing for the charged crime.

6. In your system, is a defendant entitled to a reduction in sentence if he pleads guilty? If so, how is the
reduction calculated?

There is no legal provision that provides a mandatory reduction in sentence if a defendant pleads guilty. In
the Summary proceedings the motion to indict shall state the type and measure of a legal sanction
requested to be passed. Plea bargaining in the Summary proceedings is possibility established by the
practitioners.
In “regular” criminal proceedings a guilty plea is almost always taking in account as a mitigating
circumstance by the court in sentencing.

B. Sentencing examples

Only very brief facts are given, but please indicate what in your system the sentence would be.

1. A is 25 and known to be a drug dealer. Acting on information, the police stop and search him in the
street. He has no drugs but is found to be in possession of a revolver which is loaded. He says he carries it
to defend himself. He is charged with possessing a prohibited weapon.

In Argentina, not all weapon possessions are forbidden, there are weapons which may have a civilian use,
with which there is no problem whatsoever, as long as a legal authorization to own them has been
obtained, and as a result their possession is allowed; on the contrary, if we were dealing with a weapon of
high caliber or the ones referred to as ‘armas de guerra’ [war weapons], according to the argentine law,
which possession is forbidden by law, in this case the accused may be sentenced to imprisonment ranging
from 3 years and 6 months to 8 years and six months. If at the moment of his detention, the only crime the
accused has committed was possession of a forbidden weapon, he shall be charged with possession of a
forbidden weapon, and his condition of drug dealer, in that case, shall have no influence on the legal
significance pertaining to his conduct.

2. B is 30 and has no criminal record. He meets a woman at a club and they drink together. At the end of
the evening, he walks her home and makes it clear he wants to have sex with her. She says no but he pu lls
her into a quite place and forces her to have sex. The woman submits out of fear of being injured. He claims
that he thought she was consenting but is found guilty of rape.

For the argentine law, this is a typical rape case, since the victim’s consent is negatively affected by the
violence with which she is forced to have intercourse. This crime is defined in Title III, Chapter II of the Penal
Code, which in its article 119 third paragraph establishes a penalty of imprisonment ranging from 6 to 15
years, depending on the special circumstances of each case and on the produced evidence.

3. C is a heroin addict who pays for his drugs by committing burglaries. He breaks into a dwelling house
intending to steal but is caught. It is the third time he has been convicted of a dwelling house burglary since
2000. He is 22.
This is a case of attempted robbery, and since it would result in a third conviction, the accused may be declared to be recidivist, provided that in at least one of his prior convictions he had been effectively imprisoned.

4. With 1 gram of alcohol in his blood, D, who is 40 and has no criminal record, drives his car. Affected by the alcohol, he drives dangerously by pulling out to overtake into the path of an oncoming car. The driver of the oncoming car is killed. D is charged with causing death by dangerous driving.

Based on the description of the case, we are dealing with involuntary manslaughter, which, according to article 84 of the Argentine Penal Code, has a penalty of imprisonment ranging from 6 months to 5 years, and debarment from driving a vehicle for a term from 5 to 10 years; obviously, it should be proved that the accident was due to negligence, and not a case of willful murder, where the legal situation would be completely different.

5. E is 50 and has been the manager of a branch of a major bank. He has no criminal record and is well-regarded in the local community. Over a period of about 2 years he has stolen money from the bank and used his knowledge of the bank's accounting procedures to cover up his thefts. The sum involved is £150,000, say 200,00 euros.

In this case we would consider "Mr. D" to be author of the crime of fraud, as defined in article 173 of the Argentine Penal Code, for which there is a penalty of imprisonment ranging from 1 month to 6 years, according to the factual characteristics and personal circumstances of "D". The amount of money which was object of the fraud bears no influence on the legal significance of the author's conduct, but it may be taken into account at the moment of deciding the severity of the penalty to be imposed.